HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 445 of 2001
(Criminal Revision No. 688/1986 Old No.)

Jagdish Chamola S/o Tulsi Ram
R/o Village Dhamka Patty Chalan Syun
District Pauri Garhwal …….. Revisionist

Vs.

State of U.P. …….Respondent

Sri L. K. Tiwari learned counsel for the revisionist.
Sri H.C. Pandey learned A.G.A. for the State.

Hon'ble Irshad Hussain, J.

This is a criminal revision under Section 397/401 of the Code of Criminal Procedure against the judgment and order dated 10.3.1986 passed by the then Sessions Judge, Pauri Garhwal in criminal appeal no. 51/1985 dismissed the appeal of the revisionist modifying the sentence and conviction of the revisionist to undergo RI for three months reducing from one years RI and further sentencing to pay a fine of Rs. 1000/-.

The case against the revisionist was that on 13.3.1981 at about 4PM in the forest of Chhatikhal within compartment no.1, he voluntarily inflicted simple hurt to complainant-Sri Shyam Singh (PW-1) – a government employee while on government duty as forest guard. The offence committed is punishable under section 332 IPC and from the evidence of the complainant it was proved beyond doubt that he was assaulted while he was discharging government duty. Learned counsel for the revisionist drew attention to the cross-examination of this witness to bring home his point of view that the courts below did not properly consider the evidence of the witness. Having gone through the statement, I find no perversity in appraisal of the witness in the case and therefore the argument that the complainant was not discharging the government duty at the time of the incident is unwarranted.

Witness Kanhaia Lal (PW-3) was an eye-witness of this occurrence and he also supported the prosecution case. Nothing of substance could

be extracted from his cross-examination which may assail his credibility. Dr. K.N.Shukla (PW-6) has medically examined the said victim at 9:15 PM on 13.3.1981 and prepared injury report Ex.Ka.6. His evidence corroborated the prosecution version and evidence of the above witnesses that assault was made on the victim who sustained simple injury. Having considered the evidence on record, it is evident that the evidence was sufficient to bring home guilt to the revisionist and he had rightly been convicted for offence punishable under section 332 IPC. In appeal the learned Sessions Judge, Pauri Garhwal reappraised the evidence in proper perspective and found himself in agreement with the conclusions drawn from the evidence by the learned Magistrate. In other words, the judgments of the courts below are based on fair consideration and appreciation of the evidence and there can be no doubt that the revisionist had rightly been convicted under section 332 IPC.

Learned counsel for the revisionist then submitted that the sentence awarded is excessive and considering the nature of the very minor injury, previous antecedents and also the age of the revisionist, the sentence of imprisonment already undergone and the fine imposed shall be sufficient to meet the ends of justice. The revisionist is more than 65 years old and he has not criminal history. He remained under custody during the enquiry and trial for about eight days. The occurrence took place in the year 1981 and considering these factors no useful purpose will be served to send him to jail not to serve out the sentence as modified by the learned Sessions Judge. Having considering the mitigating factors, I am of view that ends of justice will be met if the sentence is further modified and reduced to the period of imprisonment already undergone and to pay fine of Rs. 1000/- (Rupees one thousand only).

For the reasons aforesaid, the revision is partly allowed. Convicted of revisionist under section 332 IPC is affirmed and maintained. The sentence awarded is modified to the sentence already undergone and to pay fine of Rs. 1000/- (Rupees one thousand only) under section 332 IPC. In default of payment of fine, the revisionist shall undergo RI for three months.

Let the record be sent back to the CJM Pauri Garhwal for compliance and report to be submitted within two months.

(Irshad Hussain, J.)

Dated 11.5.2004

Rawat